



Local Procurement Policy

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SECTION I - INTRODUCTION

The purpose of these guidelines is to provide direction to employees and agents of the Fresno Regional Workforce Development Board (FRWDB) in conducting procurement and purchasing activities in compliance with federal and state procurement standards.

The FRWDB shall conduct all procurements in compliance with federal and state regulations governing the Final Rule of the Workforce Innovation and Opportunity Act (WIOA, or the Act). All provisions of the WIOA Final Rule became effective July 22, 2014. All WIOA-funded programs and activities must comply with applicable provisions in the Final Rule.

A. Controlling Legislation

1. WIOA (Public Law 113-128)
2. Stevens Amendment (Public Law 100-463, Section 8136)
3. Title 2 *Code of Federal Regulations* (CFR) Part 200: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Uniform Guidance)
4. Title 2 CFR Part 2900: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (Department of Labor [DOL] Exceptions)
5. Title 20 CFR WIOA, "DOL; Final Rule"
6. Title 34 CFR WIOA, "Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule"
7. California State Contracting Manual, Subject: Chapter 5: "Competitive Bidding Methods" (April 2015)
8. Workforce Services Directive WSD17-08, Subject: Procurement of Equipment and Related Services
9. Workforce Services Directive WSD16-10, Subject: Property - Purchasing, Inventory, and Disposal (November 10, 2016)
10. WSD16-05, Subject: *WIOA Closeout Requirements* (July 29, 2016)
11. WSD16-14, Subject: Selection of America's Job Center of California (AJCC) Operators and Career Services Providers (December 19, 2016)
12. WSD16-16, Subject: Allowable Costs and Prior Written Approval (February 21, 2017)
13. Memorandum dated June 20, 2018: Executive Office of the President, Office of Management and Budget, "Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance"

SECTION II - GENERAL GUIDELINES AND PROVISIONS

All procurement actions are to be conducted in a manner that provides for “full and open competition”. Within the context of open competition, the following four (4) methods may be used to procure goods or services: micro-purchase; small purchase; competitive proposals (Sealed Bid or Request for Proposals (RFP)); and non-competitive proposals (Sole Source). The type of purchase is generally determined by the “per transaction” value of the procurement and the type of goods or services being purchased. “Per transaction” is a single solicitation for a single item (e.g., copying machine), group of related items (e.g., office furniture), or a specified service (e.g., staff training). Purchases are not to be piecemealed, i.e. broken down into smaller components to avoid more stringent procurement requirements. When acquiring equipment with a unit price greater than \$5,000, the agency shall complete and document a comparison between leasing and purchasing. See Section V, Prior Approval for additional requirements.

A. Responsibility

The Procurement Facilitator shall be responsible for developing and maintaining the actual processes and tools to be used to implement this Policy. The Executive Director is responsible for approving all procurement processes and updates. The FRWDB Board of Directors is responsible for approving this Policy.

The FRWDB, through the Procurement Facilitator, is responsible for drafting and distributing procurement documents, publishing the procurement notices, receiving the proposal documents, and coordinating with the requesting department manager for the evaluation of the proposal documents. Depending on the goods or services being procured, the Procurement Facilitator may request information and/or assistance from, or delegate the procurement to, other FRWDB departments.

The department managers are responsible for providing to the Procurement Facilitator all information related to program design and/or bid specifications (including independent estimates), background, statement of work, evaluation factors, etc., in order to assist the Procurement Facilitator in preparing and drafting the procurement instrument and other related documents. The department managers are responsible for completing a cost price analysis as required.

In those circumstances where the General Services and Information Technology departments have a need to procure services or products that fall under \$50,000, as defined in Section III, Item B, Small Purchases (see page 8), those departments will be responsible for performing and documenting the procurement as outlined in this policy, subject to the review of the Procurement Facilitator.

B. Applicability

This Policy applies to all procurements of the FRWDB, the Fresno Area Workforce Investment Corporation (FAWIC), and its sub-contractors who are sub-recipients of federal funds. See Section VIII - Procurement Activities by Sub-Recipients for additional guidance, requirements and limits.

The provisions in this Policy do not apply to the selection of training services paid through Individual Training Accounts (ITA) or On-the-Job Training (OJT) contracts. Procurement for these services are outlined in separate FRWDB procedures

C. Approval

The following table provides approval levels for the purchases of goods and services for amounts that are included in a budget approved by the FAWIC or FRWDB, e.g., FAWIC agency budget, or America's Job Centers of California budget:

Amount of Purchase	Staff Approval Levels
\$.01 to \$1,000	Department Unit Head
\$.01 to \$5,000	Senior Deputy Director (except IT and General Services Budgets)
\$.01 to \$10,000 (IT or General Services Budgets only)	General Services/IT Support Manager or Deputy Director of Information Systems
\$5,001 to \$49,999	FRWDB Executive Director for FAWIC and FRWDB budgets (except as noted above)
\$50,000 and over	FAWIC (for agency budget) or FRWDB (for all other budgets) Boards of Directors

All other purchases for goods and services over \$50,000 that are not included in an approved budget must be approved by the FRWDB Board of Directors (Board), subject to the veto authority of each Chief Local Elected Official, if the matter is opposed by a majority of their respective governing board (Fresno County Board of Supervisors) or council (Fresno City Council).

D. Standard of Conduct and Conflict of Interest

All procurement activities are subject to the rules and regulations pertaining to the code of conduct and conflict of interest policies, including sanctions as prescribed by law, described in the FRWDB's policies and Operational Directives.

All FRWDB staff, FRWDB Board members, and outside rating staff must not divulge, in advance, purchasing or specific proposal information. Procurement activities must be conducted in a confidential manner.

Confidentiality must be maintained for all procurements. All proposals and/or quotes submitted are securely handled and stored. FRWDB staff involved in any aspect of a procurement must not reveal or disclose information to anyone outside of the identified group involved in conducting the procurement, rating bids, and making contract award decisions. All information will remain confidential until the FRWDB has awarded and signed a contract with the awardee(s).

During the procurement process, unauthorized FRWDB staff or FRWDB Board members shall not communicate with bidders or bidder, as the case may be, regarding the procurement. Authorized staff will be identified in each procurement and will be the primary point of contact for discussion or information pertaining to the procurement. In the event a bidder attempts to communicate with

unauthorized FRWDB staff or FRWDB Board members, the staff or Board member shall immediately notify the FRWDB Executive Director of such attempt(s). Violation of this clause may constitute grounds for rejection by the FRWDB of the bidder's proposal.

Individuals in a decision-making capacity, including FRWDB Board members, are prohibited from engaging in any activity, including the award or administration of a contract, if they have a conflict of interest, as defined by Federal and State laws, including, but not limited to, the California Political Reform Act and California Government Code section 1090 *et seq.* Conflict of interest and nondisclosure policies and procedures are provided to all FAWIC employees, outside agency raters, and FRWDB Board members participating on procurement review teams. These individuals agree to abide by these policies and procedures by signing a "Conflict of Interest/Nondisclosure Statement". The original signed statements shall be maintained in the procurement file. Documentation for conflict of interest compliance for FRWDB Board members on any given procurement or contract award will be noted in the minutes of the FRWDB Board meeting.

E. Documentation

The original procurement file for Requests for Small Purchases, RFPs, Requests for Quotes (RFQs), Invitations for Bids (IFBs) and Non-Competitive Procurements will be maintained by the Procurement Facilitator, except as noted below.

Procurement records for small purchases (\$.01 to \$49,999.99) will be retained for a minimum of three (3) years following the submission of the final expenditure report for each procurement by the Fiscal department. Procurement Files for procurement activities over \$50,000 will be retained for the same period by the Procurement Facilitator.

F. Sub-recipient and Contractor Distinctions

A sub-recipient is a legal entity to which a sub-award of federal funds is made and that is accountable to another subrecipient or recipient for the use of the funds provided.

A contractor is an entity that receives a contract, as defined in Uniform Guidance Section 200.23.

Sub-recipient

A subrecipient carries out a portion of a federal award and creates a federal assistance relationship with the pass-through entity. The following descriptions are indicative of a non-federal entity in the role of a subrecipient:

- Determines eligibility for the federally funded program
- Performance is measured against the objectives of the federal program
- Maintains programmatic control or independent discretion over work
- Responsible for adherence to applicable federal program compliance requirements (e.g. WIOA)
- Uses federal funds to carry out a program for a specified public purpose as opposed to providing goods or services for a program or pass-through entity
- Directly supports goals of grant

Contractor

A contractor is a vendor, dealer, distributor, merchant, or other seller providing goods or services that are required to conduct a federal program. The following descriptions are indicative of a contractor in a procurement relationship with the non-federal entity disbursing federal funds:

- Provides goods and services to a variety of purchasers within normal business operations
- Operates in a competitive environment
- Provides goods or services that are ancillary to the operation of the federal program
- Not subject to federal compliance requirements of the program resulting from the agreement
- Does not participate in program design
- Holds little or no independent discretion over program work or direction
- Undelivered work will result in non-payment
- Not required to directly support goals of grant

The chart provided in Exhibit C includes a list of indicators that may be of assistance in distinguishing subrecipients from contractors. This guidance is based in part on the information found in the Uniform Guidance Section 200.330.

G. Request for Concept Papers

The FRWDB may request, at any time, concept papers to help identify innovative, custom, or unique employment and training activities, services, and programs, subject to the interest of the FRWDB and the availability of funds. If the FRWDB is interested in a further review, then the proposer will submit a full proposal and be subject to the conditions of the standard procurement process as described herein.

H. Exclusion of Contractors

Contractors or Individuals that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing on such procurements.

I. Right to Reject Proposals, Finalize and Establish Agreement Deadlines

The FRWDB will not pay for any costs incurred by the responding entities in the preparation of proposals, quotes, or bids.

The RFQ, RFP, or Sealed Bid does not commit FRWDB staff or FRWDB Committees/Councils to recommend approval of an agreement based solely on the highest score of the applicants or the lowest price, with reasonable justification.

The FRWDB reserves the right to:

1. Accept or reject any or all proposals received in response to the procurement;
2. Cancel, in part or in its entirety, the procurement;
3. Conduct a cost and/or price analysis of the proposed budget;

4. Add, delete, or amend the cost/price analysis as a part of the finalization process with the successful responsive entity. Items that may be included, but are not limited to:
 - a. Budget line items
 - b. Staffing patterns/cost of salaries
 - c. Overhead cost, to determine necessary and reasonable costs

The procurement for the RFQ, RFP, or Sealed Bid, shall include the time, dates and activities, starting with the issuance of the procurement document to the time that an agreement is awarded, as indicated in the timetable. If an agreement has not been finalized by the deadline, FRWDB staff reserves the right to recommend appropriate action to be taken. Action may include reissuing of the RFQ, RFP or Sealed Bid, recommending the next qualifying proposal or any other actions deemed reasonable or necessary as decided by FRWDB staff or FRWDB Board, as applicable.

Funds may not be spent until execution of a formal contract, agreement or formal purchase order (P.O.), where appropriate, and State approval, when required.

SECTION III: PROCUREMENT METHODS

For a transaction of less than \$250,000, the small purchase method may be used; however, the sealed bid (IFB) and RFP may also be selected if appropriate. For transactions of \$ 250,000 or more, the competitive procurement process (either Sealed Bid or RFP) must be used. Sole source, only where justifiable, can be used for a transaction of any amount.

A. Micro-Purchase

Micro-purchases (purchases of \$1 - \$9,999.99): The fiscal threshold set by Federal Acquisition Regulation Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. To the extent practicable, FRWDB staff will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if FRWDB staff considers the price to be reasonable. Micro-purchases are required to be documented to include justification for the purchase and the selection of the vendor. This justification is to be included with the purchasing documents.

B. Small Purchase

The State of California defines a Small Purchase as being less than \$250,000 in the aggregate. The following defines the documentation required for the specified dollar range:

Purchase Amount	Required Documentation
\$10,000.00 to \$49,999.99	Two (2) documented quotes
\$50,000.00 to \$249,999.99	Three (3) written quotes in response to an RFQ

For Small Purchases between \$10,000.00 and \$49,999.99: Two (2) or more documented quotes must be obtained. The documentation can include product or service catalogs, current price lists. Catalogs and price lists should be no more than one (1) year old. The justification and quotes received are to be included with the purchasing documents.

For Small Purchases between \$50,000.00 and \$249,999.99: Three (3) written quotes and an RFQ are required. The RFQ should specify the quantity, time frames, and all the requirements of the product or service. Proposals must be solicited from vendors that can reasonably be expected to provide the goods or services needed. The identification of sources and solicitation of proposals must be supported by documentation. The RFQ must be provided in writing in one (1) of the following methods: mail services; fax; email; or available for download and printing from the FRWDB website. The written response must be signed and dated by the proposer.

Small Purchase Selection Basis: FRWDB staff will review the quotes according to the specifications of the requests or of the RFQ. For commodity goods or services, the general basis for selection is the lowest total price (excluding sales tax) if all other specifications are met; however, the selection of the lowest quote is not always required, with reasonable justification. Qualifications of the vendor, availability of the goods or services, service, quality, and location are additional factors that could influence the procurement. The documentation must contain the

basis for vendor selection. If the basis is something other than price, the documentation in the procurement file must describe the additional criteria for selection, the relevance of the criteria to the need and benefit, and the relative advantage of the offering from the selected vendor.

Proper documentation for a small purchase includes:

1. A description of the goods or services being purchased, including the quantity and any additional criteria used to determine the procurement decision, such as a copy of the RFQ, if required (as outlined in the table on page 8).
2. All providers contacted/considered and the prices offered or formal quotes for purchases between \$10,000 and \$250,000.
3. Why the provider was selected, including how the provider met any additional criteria, and the price analysis. (FRWDB/FAWIC agenda item or Method of Procurement Form, as applicable).
4. Copy of the purchase document (sales receipt, contract, purchase order or agreement).

If less than three (3) responsive quotes are received (for procurements between \$50,000 and \$250,000 (RFQ)), the solicitation will be considered a failed competition. The FRWDB then has the option to re-compete the procurement or to enter into a sole source procurement.

C. Approved Vendors Lists

The FRWDB will use Approved Vendors Lists (AVLs) when the staff needs to have the ability to select from a list of pre-approved contractors/consultants when there is a need for services or tools of various specific types that can be categorized under a specific type of service (for example: Soft Skills Services, Marketing Services, Consulting Services, Information Technology Services, Contracted Education Training services).

The Procurement Facilitator will utilize the RFQ process as the procurement type. The intent is to obtain multiple proposals that will either cover all of the requested services or portions thereof. (See Section III, Item B)

If the anticipated annual cost of services exceeds the Small Purchase limit of \$250,000, then an AVL not the correct methodology and the RFP process is to be followed, in order to issue a single contract. Purchases are not to be piecemealed.

Once a contractor/consultant is placed on an AVL, no further procurement activity will be required, in order to enter a contracted relationship. However, if there is more than one contractor/consultant on the AVL that provides the same services, staff must complete a cost or price analysis (see Section IV) and specific contract negotiations to ensure that the cost of the contracted services is reasonable and justified based on the proposals listed on the AVL.

If the type of service being contracted for requires pre-approval from the State, this must be documented and secured prior to the execution of any contract. See Section V.

D. Cooperative Purchasing Agreements/Procurements

Equipment, products, services, or consultant services may be purchased through contracts entered into by the State of California or the City or County of Fresno, other qualified governmental or other Workforce Development Boards in the San Joaquin Valley Regional Planning Unit, through a competitive bid process or through cooperative purchasing contracts. Equipment, products, services, or consultant services purchased through this process is considered to be purchased competitively and to have met the FRWDB procurement requirements.

FRWDB staff will obtain documentation to verify the contract and procurement process used by the other agency for any item prior to a purchase and is valid (less than five (5) years old). A Sole Source Procurement will not be acceptable.

Documentation will include:

- A copy of the procurement document(s) used by the other agency (based on Section III, paragraphs A, B or E); and,
- A copy of the issued contract; and,
- A copy of the selected/winning bid, proposal, or quote; and,
- A copy of the selection justification document (for example: rating results); and,
- Completed FRWDB cost analysis (See Exhibit B).

Equipment, products, services, or consultant services purchased in this provision must meet the specification requirements as determined by the FRWDB.

E. Competitive Proposals

1. Sealed Bid (Invitation for Bid (IFB))

Sealed Bids are publicly solicited procurements for which a firm fixed-price award (lump sum or unit price), or other fixed-price arrangement, is awarded to the responding entities whose bid has conformed to all the requirements, terms, and conditions of the IFB, and is lowest in price. This method is appropriate when the desired goods and services to be provided can be specified and described with a high level of precision and completeness. The best examples are commodity-type goods or services that are widely available in the marketplace. Sealed bids may be used for purchases over \$250,000 that meet these criteria.

Once the sealed bid method has been determined as appropriate, an IFB will be developed, which shall include the following:

- a. Statement/Scope of Work;
- b. Service area, if applicable;
- c. Deadline for receipt of the IFB;
- d. Proposal submission checklist;
- e. Requirements for time, place, and methods or performance of service;
- f. Appeal process;

- g. Agreement clauses that outline what the proposers will be required to comply with and perform, in addition to the basic Statement of Work;
- h. Certifications, assurances, and representations (forms that the proposer will have to complete to affirm that it will comply with the regulatory requirements set by the United States Department of Labor (DOL), the State of California, the local governing bodies, and the FRWDB);
- i. Instructions on how to prepare and submit, at a minimum, the technical and cost/price analysis sections of the proposal. Other submissions may include proposal summary, statement of financial capability, and certification of the adequacy of the proposer's accounting system;
- j. Evaluation factors for the award including qualifying criteria;
- k. Solicitation provisions and the IFB calendar;
- l. The right of the FRWDB to reject any or all proposals when the proposal(s) is/are not responsive in providing the services as stated in the IFB. The specific reasons must be fully described and documented in the procurement file;
- m. The requirement of the signature of an appropriate official who is authorized to submit the proposal for the responding agency/entity, and their Board Resolution providing the name and title of the official with this authorization.

IFBs must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, identify all requirements that responding entities must fulfill, and all other factors to be used in evaluating bids.

The IFB will be publicly noticed for a minimum of two (2) consecutive days through local newspapers, local advertising, and trade papers that covers the entire service area, and sent to those listed on the FRWDB's prospective bidders' list and, upon request, all interested parties.

At the FRWDB's discretion, there may be a mandated Bidders' Conference, for bidders to ask questions of FRWDB staff pertaining to the IFB process and/or the Statement of Work. If a bidder does not attend the Bidders' Conference, any bid submitted will not be accepted.

Clarification of the IFB will be made by written addendum only. Only duly authorized FRWDB staff may discuss and/or prepare the addendum to the IFB. Each entity that received an IFB and attended any mandatory Pre-Bid Conference may make a written request for an addendum. The FRWDB will not be responsible for any other explanation or interpretation. Written addendums will be emailed to all persons who have received an IFB.

Sealed Bid Selection Basis: All bids received at the time and place stated in the IFB will be publicly opened and reviewed for qualification or disqualification. Generally, circumstances under which bids will be rejected or disqualified are:

- a. The bid is not submitted on time,
- b. The bid does not meet all qualifying criteria, or
- c. The bidder does not meet all of the requirements/specifications of the IFB.

The bidder with the lowest price, and who has met the technical requirements of the solicitation, will receive the award. Notice of the award will be emailed to the successful bidder. Those bidders who were not accepted will also receive email notification of the award.

FRWDB staff shall negotiate and execute contracts with those entities whose bids were awarded. These discussions will take place after final funding approval by the FRWDB Board. Negotiations may center on miscellaneous clarifications and execution/performance timelines.

If less than three (3) responsive bids are received, the solicitation will be considered a failed competition. The FRWDB then has the option to re-compete the procurement or to enter into a sole source procurement.

Proper documentation for sealed bids includes:

- a. The reason for selecting the sealed bid method (Method of Procurement Form).
- b. The estimate of the potential purchase price.
- c. A copy of the Public Notice.
- d. A copy of the IFB.
- e. Copies of all bids received.
- f. Determination of the responsibility of the bidder.
- g. Why the bidder was selected (FRWDB/FAWIC agenda item and minutes).
- h. Copy of the award document (FRWDB/FAWIC agenda item and minutes).
- i. Method of Procurement form (Exhibit A).
- j. Cost and Price Analysis form (Exhibit B).

2. Requests for Proposals (RFPs)

RFPs are used when the purchase is in excess of the small purchase amount of \$250,000. This method is typically used when the nature of the goods or services to be acquired cannot be defined as precisely required by the Sealed Bid method. RFPs are specifically used when factors other than price are important in the selection decision or if the technical requirements or specifications are of a functional nature or unclear.

Once the RFP method has been determined to be appropriate, an RFP will be developed. The RFP will include the following information, as applicable:

- a. Statement/Scope of Work.
- b. Service area, if applicable.
- c. Deadline for receipt of the RFP.
- d. Proposal submission checklist.
- e. Requirements for time, place, and methods or performance of service;
- f. Appeal process.
- g. Agreement clauses that outline what the proposers will be required to comply with and perform, in addition to the basic Statement of Work.
- h. Certifications, assurances, and representations (forms that the proposer will have to complete to affirm that it will comply with the regulatory requirements set by the United States DOL, the State of California, the local governing

- bodies, and the FRWDB).
- i. Instructions on how to prepare and submit, at a minimum, the technical and cost/price analysis sections of the proposal. Other submissions may include proposal summary, statement of financial capability, and certification of the adequacy of the proposer's accounting system.
 - j. Evaluation factors for the award and method for scoring the proposals, including qualifying criteria.
 - k. Solicitation provisions and the RFP calendar.
 - l. The right of the FRWDB to reject any or all proposals when the proposal(s) is/are not responsive in providing the services as stated in the RFP. The specific reasons must be fully described and documented in the procurement file.
 - m. The requirement of the signature of an appropriate official who is authorized to submit the proposal for the responding agency/entity, and their Board Resolution providing the name and title of the official with this authorization.

At the discretion of the FRWDB, a draft Statement of Work (SOW) for the services may be released for public comment. The public comment period will be defined by the FRWDB and may be extended as deemed necessary. The following process will be used for draft SOWs:

- a. Public meetings will be scheduled at appropriate locations to record the public comment.
- b. Once the public comment period has ended, the FRWDB will review the comments and make any changes to the SOW that the FRWDB deems necessary.
- c. A summary of the comments will be made, which will include the actual comment, whether or not the SOW was changed as a result of the comment and, if the RFP was not changed, the reason why.
- d. The SOW, with the summary of the comments, will be submitted to the appropriate FRWDB Committee/Council for recommendation to the FRWDB Board.
- e. Once the FRWDB Board approves the SOW, the RFP will be released and the process will continue as outlined further in these procedures and in the RFP.

The RFP will be publicly noticed for a minimum of two (2) consecutive days through local newspaper(s), local advertising, and/or trade papers that covers the entire service area, and sent to those listed on the FRWDB's prospective bidders' list and to all interested parties upon request. The RFP and all addendums will also be available on the FRWDB website.

At the FRWDB's discretion, there may be a mandated Bidders' Conference, for bidders to ask questions of FRWDB staff pertaining to the RFP process and/or the Statement of Work. If a proposer does not attend the mandatory Bidders' Conference, any proposal submitted will not be accepted.

If any person planning to submit a proposal finds discrepancies in or omissions from the RFP or has any doubt to the true meaning or interpretation of any item, clarification may be

requested in writing or email, from the contact person(s) listed in the RFP, by the deadline established in the RFP timeline. The person submitting the request will be responsible for its prompt delivery.

Clarification of the RFP will be made by written addendum only. Only duly authorized FRWDB staff may discuss and/or prepare the addendum to the RFPs. The FRWDB will not be responsible for any other explanation or interpretation. Written addendums will be emailed to all persons who have received an RFP and posted to the FRWDB website.

Proposals will be submitted to the FRWDB by the specified time and date listed in the RFP. The proposals will be time and date stamped upon receipt by FRWDB staff. Late proposals will be rejected and will not be considered for funding.

If less than three (3) responsive proposals are received, the RFP will be considered a failed competition. The FRWDB then has the option to re-compete the procurement or to enter into sole source contract or cancel the procurement.

All submitted proposals become the property and the official files of the FRWDB. The proposals will not be made public until after the agreement is signed by the FRWDB Board Chair. The FRWDB reserves the right to reject any and all proposals in response to the RFP.

RFP Selection Process: The proposal review process will include the following activities to ensure that the FRWDB procurement system meets required standards:

- a. All proposals will be screened for compliance with the WIOA, federal regulations, state policy, the Local FRWDB Five-Year Plan, and compliance with the specifications of the RFP.
- b. Awards will be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of the proposed sub-grant or contract.
- c. Proposers may be invited to answer specific questions, at the discretion of the FRWDB. General presentations will not be permitted.
- d. All proposals will be reviewed, scored, and ranked. The selection of a proposal for contract award will be made through a two-phase process:
 - i. Phase I: FRWDB staff will initially evaluate each proposal for acceptability, with emphasis placed on responsiveness to the RFP specifications; and
 - ii. Phase II: A specialized rating team will evaluate for acceptability all proposals forwarded from FRWDB staff for consideration, with emphasis placed on the proposal's ability to meet the requested performance and costs that are reasonable, allowable, necessary, and competitive, as measured by the review of the line item budget, the program design, and

comparison to all other proposals. Proposals will be scored on a 100-point scale and must receive a minimum rating of 70 points to be considered for funding.

At the discretion of the FRWDB, the Phase II point scale may be increased based on the complexity of the Scope of Services of any particular RFP. In these cases, the required minimum rating will be 70 percent.

The FRWDB may also conduct interviews and site visits of the proposer's site(s) as a result of the ranking of written applications.

Only those proposals that have met the minimum score threshold of 70 percent will be considered for recommendation to the appropriate FRWDB Committee/Council or the FRWDB Board. Recommendations made to a FRWDB Committee/Council must be forwarded to the FRWDB Board. The FRWDB Board must approve all final awards, subject to the veto authority of each Chief Local Elected Official serving on the FRWDB Board, if the matter is opposed by a majority of their respective governing board (Fresno County Board of Supervisors) and council (Fresno City Council). In the situation where the timing of the FRWDB Board meeting is not conducive to the need to award a contract(s) in a timely manner, the FRWDB Board may authorize the FRWDB Executive Committee to receive the recommendation and make the appropriate decision on behalf of the FRWDB Board. The actions of the Executive Committee will be reported at the next full Board meeting.

The bidder with the highest points, and who has met the technical requirements of the solicitation, will receive the award. Notice of the award will be emailed to the successful proposer. Those proposers who were not accepted will also receive emailed notification of the award.

FRWDB staff shall negotiate and execute contracts with those entities whose proposals were approved for funding. These negotiations will take place after final funding approval by the FRWDB Board. Discussions may center on such items as cost, program design, service levels, service by geographic locations and/or target populations, and miscellaneous clarifications.

Proper documentation for RFPs includes:

- a. The reason for selecting the competitive proposal method.
- b. The estimate of the potential purchase price.
- c. A copy of the Public Notice.
- d. A copy of the RFP.
- e. Bidders' Conference questions and answers.
- f. Copies of all bids received.
- g. The scoring criteria and the evaluation/scoring sheets for each proposal, including determination of the responsibility of the bidder and the cost analysis.
- h. The public notice of intent to award (Evaluation Summary).
- i. Why the bidder was selected (FRWDB/FAWIC agenda item and minutes).
- j. Copy of the award document (FRWDB/FAWIC agenda item and minutes).

- k. Method of Procurement form (Exhibit A).
- l. Cost and Price Analysis form (Exhibit B).

F. Non-Competitive Procurements (Sole Source)

The FRWDB shall not allow the use of Sole Source procurement except under one (1) of the following conditions (must be documented in the procurement file):

1. The item or service is available only from a single source;
2. A public emergency precludes delay;
3. The awarding agency (State of California Employment Development Department (EDD)) authorizes the specific noncompetitive procurement; or
4. After solicitation of a number of sources, competition is determined inadequate. This condition is only allowable after a competitive process has been used and there are insufficient bidders (fewer than three (3)).

Use of the Non-Competitive Procurement for public emergency reasons should be for goods, supplies, or services that will provide for the agency's immediate need to enable correction or to resolve the emergency. For long-term or on-going needs, one (1) of the competitive procurement methods must be used.

A cost or price analysis is required for all Non-Competitive Procurements. The reason for selecting the method along with the justification for the provider selection must be carefully documented and maintained in the contract and/or procurement files, as appropriate.

Proper documentation for Non-competitive Procurements includes:

1. Completion of the "Method of Procurement" form (Exhibit A), Non-Competitive Proposal section, detailing the reason for selecting the sole source method, including why the procurement was infeasible under one of the other procurement methods and which of the additional sole source conditions the procurement met.
2. The estimate of the potential purchase price.
3. A copy of the RFQ/IFB/RFP for noncompetitive procurement.
4. A determination of the responsibility of the bidder.
5. A copy of the Price and Cost analysis form (Exhibit B).
5. Why the bidder was selected.
6. Copy of the award document.

No Sole Source contract will be signed and finalized until all procurement activities have been verified, documented and filed.

If the decision to sole source a procurement is the result of inadequate competition, the following areas of the RFQ, IFB, or RFP will be reviewed to ensure that the process was as competitive as possible and documented in the procurement file:

- The specifications to ensure they were not unduly restrictive or would favor the selection of one (1) supplier or service provider;

- The price or cost estimates to ensure that they are fair and reasonable; and
- The timetable to ensure that there was ample time in the planning process to publicize solicitations in newspapers and other sources.

If the Sole Source method was chosen due to a public emergency, a complete description of the emergency and the rationale for the Sole Source procurement must be documented in the procurement file.

FRWDB staff will document in the procurement file the conditions that required the Sole Source procurement. In all cases, FRWDB staff will determine that the costs for the program are necessary and reasonable as required by federal regulations and document the determination in the procurement file.

The Sole Source contract award must be approved by the FRWDB Executive Director, if under \$50,000. A Sole Source procurement in excess of \$50,000 must be approved by the FRWDB Board or the FRWDB Executive Committee.

SECTION IV – COST OR PRICE ANALYSIS

A Cost or Price Analysis must be performed for all procurement activities that exceed the Simplified Acquisition Threshold over \$250,000 and all non-competitive procurements. Additionally, the analysis will be performed at contract modifications of monetary contract terms and contract renewals. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, and an estimate shall be required before receiving bids or proposals. The analysis will be documented in the procurement file.

Exhibit B is used to document this decision process.

An analysis of contractor prices shall be performed by comparing proposed prices to catalog or market prices of comparable products sold to the public or based on prices set by law or regulation.

A. Cost Analysis is the review and evaluation, element by element, of the cost estimate supporting a proposal for the purpose of pricing a contract. Cost Analysis is required when price analysis alone is not sufficient to determine that a price is fair and reasonable for a product or service. A Cost Analysis is required for all Provider of Services RFPs and for all Non-competitive procurement actions. Cost Analysis must be conducted when:

1. The bidder is required to submit the elements of the estimated cost.
2. Adequate price competition is lacking.
3. For sole source procurement, including contract modification or change orders unless price reasonableness can be established on the basis of market price.

The Cost Analysis Worksheet must be completed and a copy must be maintained in the procurement file.

When acquiring equipment, a cost comparison between leasing and purchasing is to be completed. See Section V, Prior Approval, for additional requirements.

B. Price Analysis is the process of examining and evaluating a price without looking at the estimated cost elements and proposed profit of the offeror whose price is being evaluated. The sole purpose of Price Analysis is to determine if the final price is fair and reasonable. Recommended process for comparisons is:

1. Comparison of prices of competing offers and selecting best price.
2. Comparison of prior quotes and contracts for the same or similar requirements, taking inflation into account.
3. Comparison of offers to parametric estimates or benchmarks, e.g., dollars per square foot or cost per instructional hour.
4. Comparison of offers to an independent agency estimate.
5. Comparison of material contractual terms and conditions associated with the quotes.

The Price Analysis Worksheet must be completed and a copy must be maintained in the contract file.

SECTION V – PRIOR APPROVAL

Written prior approval from EDD is required for equipment and related services under the following criteria:

- A. Procurements with a per-unit cost that exceeds \$5,000.
- B. Related procurements with cumulative costs that exceed \$5,000 within the same state fiscal year.
- C. Procurements resulting in improvements to land, buildings or equipment which exceed \$5,000.

See State Directives WSD 17-08, Procurement of Equipment and Related Services, and WSD 16-16, Allowable Costs and Prior Written Approval, for further details and procedures.

SECTION VI – PROTESTS, APPEALS and GRIEVANCES

A. Protest/Appeals Process

If an entity has submitted a proposal and is not recommended for funding during the review process, the entity may appeal the recommendation to the FRWDB. Protests/Appeals may not dispute the particular score received by the petitioning entity, or the scores assigned to a competing entity. The scores given by the rating panel are final and not subject to question by an appealing entity. An appealing entity may protest/appeal the recommendation of the evaluators if it can show that any material portion of the FRWDB-approved procurement process has not been followed.

Any protest/appeal must be submitted in writing to the FRWDB within five (5) working days of the posting of the preliminary award notification. All protests/appeals are to be addressed to the FRWDB Executive Director. Only protest/appeals, which cite the specific section(s) of the RFP that have been violated, will be considered. The FRWDB Executive Director will review all protests/appeals and may seek clarification from the party appealing the award. The protest/appeal shall be elevated to the appropriate FRWDB Committee/Council, and then to the FRWDB Board. Protests/appeals received after the established time frame will not be accepted.

The decision made by the full FRWDB Board as to which proposal(s) are funded will be final.

B. Grievances

Filing a formal grievance is the second step in the dispute resolution process available only after denial of a protest/appeal. The FRWDB Grievance Procedures are intended for a more formalized, comprehensive process usually involving legal representation by both parties. This process does not allow for resolution prior to contract award in accordance with the procurement timetable. In no event shall the filing of a grievance delay the procurement process in accordance with the timetable.

Grievances regarding procurement procedures may be made using the procedures outlined in the FRWDB's "WIOA Complaint and Hearing Procedures" available upon request and available on the FRWDB website. Contract awards will not be delayed pending the outcome of a formal grievance. The grounds for filing a grievance are limited to charges that the procedures specified in the procurement document, FRWDB policies, or that are required by law, have not been followed. The grievance shall set forth specific facts and evidence and specify which law, procurement procedure, or FRWDB policy has been violated. All grievance procedures must be exhausted at the FRWDB before proceeding with a grievance to the State Workforce Services Division.

SECTION VII – OTHER REQUIREMENTS

A. Services for WIOA Participants

Procurement of sub-recipients for services to WIOA participants will be performed once every five (5) years, following the appropriate procurement methodology, with the exception of the AJCC operator. Procurement for this service provider will be once every four (4) years. Renewal of the second, third, fourth, and (where applicable) fifth year of funding is contingent upon satisfactory performance in the prior years, as well as the availability of funds. If performance is not satisfactory, the service may be re-procured or awarded to the bidder with the next highest score.

B. Contracted Vendor Services

Procurement of vendor services will be procured at least once every five (5) years. At least annually, FRWDB staff will:

1. Conduct a cost/price analysis.
 - a. If that analysis determines that the services can be provided by another vendor at a lower cost, a procurement for these services will be conducted in accordance with this Procurement Policy.
 - i. In the event there is a tie between two (2) or more bidders, and at least one (1) of the bidders is a local business, the contract will be awarded to the local business, unless such preference is legally invalid. A local business is defined as a business that has a physical location in Fresno County.
2. Review each request for goods and services to avoid purchasing unnecessary or duplicate items.

C. Debarred Parties

The federal government prohibits awards to any party that is debarred. No recipient or sub-recipient shall make any awards, or permit any awards at any tier, to any party that is debarred or suspended, or is otherwise excluded from or ineligible for participation in federal assistance programs, in accordance with DOL regulations. All contracts and awards to vendors and/or sub recipients, in excess of the small purchase threshold as defined in the following sections, shall include debarment certifications. Further guidance and the current Debarred Companies list can be found at <https://www.sam.gov/SAM/>

D. High-Risk Sub-Recipient

A sub-recipient may be considered “high-risk” if the FRWDB determines that the sub-recipient is otherwise responsible, but:

1. Has a history of unsatisfactory performance;
2. Is not financially stable;
3. Has a management system that does not meet standards set forth in 20 CFR Part 627;

4. Has not conformed to the terms and conditions of a previously awarded grant or sub-agreement; **or**
5. Is otherwise not responsible.

If the FRWDB determines that awards will be made to a high-risk organization, special funding restrictions that address the high-risk status may be included in the award. Restrictions may include, but are not limited to:

1. Payment on a reimbursement basis;
2. Withholding authority to proceed to the next phase until the receipt of evidence of acceptable performance within a given funding period;
3. Requiring additional, more detailed financial reports;
4. Additional project monitoring;
5. Requiring the grantee or sub-grantee to obtain technical or management assistance; **and/or**
6. Establishing additional prior approvals.

If the FRWDB decides to impose such funding restrictions, the sub-recipient will be notified in writing, as early as possible, of the following:

1. The nature of the funding restriction(s);
2. The reason(s) for imposing the funding restriction(s);
3. The corrective actions that must be taken before the funding restriction(s) will be removed;
4. The time allowed for completing the corrective actions; **and**
5. The method of requesting reconsideration of the funding restrictions imposed.

E. Additional General Procurement Policy Requirements

1. FRWDB will have procedures that promote the use of shared resources and other agreements for common goods and services, as well as the use of federal excess and surplus property wherever possible.
2. FRWDB will have procedures to utilize small, minority, or women owned business or labor surplus area firms whenever possible.
3. FRWDB will have procedures for analysis of lease versus purchase alternative to determine the most economical and practical procurement.
4. All Procurements will comply with the Stevens Amendment, specifying the approximate percentage of funding from Federal sources. See Public Law 100-463, Section 8136.

F. Required Contract Clauses

In addition, to other provisions required by the Federal agency or non-Federal entity, all agreements funded by federal funds must contain the following contract clauses referred to in Uniform Guidance Appendix II to Part 200, as appropriate:

1. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in

instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work

week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
10. Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent

with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

SECTION VIII – Procurement Activities by Sub-Recipients

All sub-recipients of the FRWDB are required to comply with all provisions of this Policy and current FRWDB Operational Directives and Information Bulletins pertaining to procurement activities.

All questions are to be directed to the FRWDB Procurement Facilitator.

For Micro-Purchases, the amount must be available in the sub-recipient's current year's contract budget. The sub-recipient is to maintain the required documentation to support the purchase as required in this Policy.

For Small Purchases, the amount must be available in the sub-recipient's current year's contract budget. The sub-recipient is to maintain the required documentation to support the purchase as required in this Policy.

If a sub-recipient needs to procure services or materials for greater than \$50,000 or it is not accounted for in their current year's contract budget, the FRWDB Procurement Facilitator must be contacted to confirm the process that will be followed to ensure compliance with this Policy. In addition, this requires the approval of the FRWDB Senior Deputy Director.

All documentation must be available for inspection by the FRWDB staff, State of California and/or the Federal Government, upon request.